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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA )  
and CALIFORNIA DEPARTMENT )  
19 OF TOXIC SUBSTANCES )  
CONTROL, )

20 Plaintiffs, )

21 v. )

22 ALLEGIANCE HEALTHCARE )  
23 CORPORATION and PHILIP )  
24 MORRIS USA INC., )

25 Defendants. )  
26  
27  
28

Civil No.

CONSENT DECREE

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1 I. BACKGROUND

2 A. The United States of America (“United States”), on behalf of the  
3 Administrator of the United States Environmental Protection Agency (“EPA”), and  
4 the California Department of Toxic Substances Control (“DTSC”) filed a joint  
5 complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive  
6 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42  
7 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation and  
8 Recovery Act (“RCRA”), 42 U.S.C. § 6973.

9 B. The United States and DTSC in their complaint seek, inter alia:  
10 (1) reimbursement of costs incurred by EPA, the United States Department of  
11 Justice, and DTSC for response actions at the Baldwin Park Operable Unit (Area 2)  
12 of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County,  
13 California (“the BPOU Area”), together with accrued interest; and (2) performance  
14 of studies and response work by the defendants at the BPOU Area consistent with  
15 the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

16 C. Each defendant that has entered into this Consent Decree (“Settling  
17 Defendant”) does not admit, and specifically denies: (i) any liability to the  
18 Plaintiffs arising out of the transactions or occurrences alleged in the complaint;  
19 and (ii) that the release or threatened release of hazardous substance(s) at or from  
20 the BPOU Area constitutes an imminent or substantial endangerment to the public  
21 health or welfare or the environment.

22 D. The work required to implement the Record of Decision (“ROD”) for the  
23 BPOU Area, as supplemented by the Explanation of Significant Differences  
24 (“ESD”), is being performed by other parties pursuant to EPA’s Unilateral  
25 Administrative Order No. 2000-13 (as amended).

26 E. The United States, DTSC, and the Settling Defendants agree, and the  
27 Court by entering this Consent Decree finds, that this Consent Decree has been  
28 negotiated by the Parties in good faith, that settlement of this matter will avoid

1 prolonged and complicated litigation between the Parties, and that this Consent  
2 Decree is fair, reasonable, and in the public interest.

3 NOW, THEREFORE, with the consent of the Parties to this Decree, it  
4 is hereby ORDERED, ADJUDGED, AND DECREED:

## 5 II. JURISDICTION

6 1. This Court has jurisdiction over the subject matter of this action pursuant  
7 to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607, and  
8 9613(b). This Court also has personal jurisdiction over the Settling Defendants.  
9 Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C.  
10 § 1391(b) and (c). Solely for the purposes of this Consent Decree and the  
11 underlying complaint, each Settling Defendant waives all objections and defenses  
12 that it may have to jurisdiction of the Court or to venue in this District. The  
13 Settling Defendants consent to and shall not challenge the terms of this Consent  
14 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## 15 III. PARTIES BOUND

16 2. This Consent Decree applies to and is binding upon the following parties:  
17 the United States; DTSC; and each Settling Defendant and its respective successors  
18 and assigns. Any change in ownership or corporate status of a Settling Defendant  
19 including, but not limited to, any transfer of assets or real or personal property,  
20 shall in no way alter such Settling Defendant's responsibilities under this Consent  
21 Decree. Each Settling Defendant's obligations under this Consent Decree are  
22 independent of the other Settling Defendant's obligations, and each Settling  
23 Defendant is entitled to the benefits of this Consent Decree in accordance with its  
24 performance of its own obligations hereunder.

## 25 IV. DEFINITIONS

26 3. Unless otherwise expressly provided herein, terms used in this Consent  
27 Decree which are defined in CERCLA , RCRA, or in regulations promulgated  
28 under CERCLA or RCRA shall have the meaning assigned to them in CERCLA or

1 RCRA or in such regulations. Whenever terms listed below are used in this  
2 Consent Decree or in the appendices attached hereto and incorporated hereunder,  
3 the following definitions shall apply:

4 “BPOU Area” shall mean the Baldwin Park Operable Unit (Area 2) of the  
5 San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa,  
6 Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted  
7 generally on the map attached as Appendix A.

8 “CERCLA” shall mean the Comprehensive Environmental Response,  
9 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

10 “Certification of Completion” shall mean EPA’s written determination that  
11 the remedial action has been performed and that the performance standards have  
12 been achieved.

13 “Consent Decree” or “Decree” shall mean this Decree and all appendices  
14 attached hereto (listed in Section XVIII). In the event of conflict between this  
15 Decree and any appendix, this Decree shall control.

16 “Day” shall mean a calendar day unless expressly stated to be a working  
17 day. “Working day” shall mean a day other than a Saturday, Sunday, or federal  
18 holiday. In computing any period of time under this Consent Decree, where the  
19 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run  
20 until the close of business of the next working day.

21 “DOJ” shall mean the United States Department of Justice and any successor  
22 departments, agencies, or instrumentalities of the United States.

23 “DTSC” shall mean the California Department of Toxic Substances Control  
24 and any predecessor or successor departments or agencies of DTSC.

25 “DTSC Response Costs” shall mean: (i) all past costs, including, but not  
26 limited to, direct and indirect costs that DTSC has incurred at or in connection with  
27 the BPOU Area prior to the entry of this Consent Decree, and (ii) all future costs  
28 (including, but not limited to, direct and indirect costs) related to the

1 implementation or oversight of the Work, that DTSC will incur at or in connection  
2 with the BPOU Area.

3 “EPA” shall mean the United States Environmental Protection Agency and  
4 any successor departments, agencies, or instrumentalities of the United States.

5 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance  
6 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 “Explanation of Significant Differences” or “ESD” shall mean the Explanation of  
8 Significant Differences relating to the BPOU Area issued by EPA in May 1999.  
9 The ESD is attached as Appendix C.

10 “Interest” shall mean interest at the rate specified for interest on investments  
11 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
12 compounded annually on October 1 of each year, in accordance with 42 U.S.C.  
13 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the  
14 interest accrues. The rate of interest is subject to change on October 1 of each  
15 year.

16 “Paragraph” shall mean a portion of this Consent Decree identified by an  
17 Arabic numeral or an upper case letter.

18 “Parties” shall mean the United States, DTSC, and the Settling Defendants.

19 “Plaintiffs” shall mean the United States and DTSC.

20 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.  
21 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

22 “ROD” shall mean the EPA Record of Decision and all attachments thereto  
23 relating to the interim remedy for the BPOU Area, which was signed by the  
24 delegate of the Regional Administrator, EPA Region 9 on March 31, 1994. The  
25 ROD is attached as Appendix B.

26 “Remedial Action” shall mean those activities, except for Operation and  
27 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

28 “Response Costs” shall mean: (i) all past costs, including, but not limited to,

1 direct and indirect costs, that the United States has incurred at or in connection  
2 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future  
3 costs (including, but not limited to, direct and indirect costs) related to the  
4 implementation or oversight of the Work, that the United States will incur at or in  
5 connection with the BPOU Area.

6 “Section” shall mean a portion of this Consent Decree identified by a Roman  
7 numeral.

8 “Settling Defendants” shall mean the Settling Allegiance Healthcare  
9 Defendants and the Settling Philip Morris Defendants.

10 “Settling Allegiance Healthcare Defendants shall mean the following  
11 entities: Allegiance Healthcare Corporation, Allegiance Corporation, Baxter  
12 Healthcare Corporation, Baxter International, Inc., Baxter Travenol Laboratories,  
13 Inc., Baxter Acquisition Sub., Inc., Travenol Laboratories, Inc., American Hospital  
14 Supply Corporation, and Cardinal Health, Inc., and all predecessor or successor or  
15 related corporate entities bearing potential liability under CERCLA, RCRA, or  
16 State law counterparts for matters addressed in this Consent Decree arising in  
17 whole or in part from the ownership or operation of the property or facility located  
18 at 4401 Foxdale Avenue in Irwindale, California.

19 “Settling Philip Morris Defendants” shall mean the following entities:  
20 Philip Morris USA Inc., successor to Philip Morris Incorporated, and all  
21 predecessor or successor or related Philip Morris corporate entities bearing  
22 potential liability under CERCLA, RCRA, or State law counterparts for matters  
23 addressed in this Consent Decree arising in whole or in part from the ownership or  
24 operation of the former U.S. Relay facility at 717 North Coney Avenue in Azusa,  
25 California.

26 “Site” shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los  
27 Angeles County, California.

28 “United States” shall mean the United States of America, including its



1 departments, agencies, and instrumentalities.

2 “Work” shall mean all activities required to be performed to implement the  
3 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,  
4 as supplemented by the ESD, at or in connection with the BPOU Area.

5 V. STATEMENT OF PURPOSE

6 4. By entering into this Consent Decree, the mutual objectives of the Parties,  
7 as more precisely described in the terms of this Consent Decree, are:

8 a. To reach a settlement among the Parties with respect to the BPOU Area  
9 that allows each of the Settling Defendants to make a cash payment, which  
10 includes a premium, to resolve any claims for civil or administrative liability under  
11 Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9607, 9607, and RCRA Section  
12 7003, 42 U.S.C. § 6973, and their respective State law counterparts, for interim  
13 response actions and for response costs related to interim response actions incurred  
14 and to be incurred at or in connection with the BPOU Area, as provided in Section  
15 VIII (Covenants Not to Sue by Plaintiffs) and Section IX (Reservation of Rights)  
16 of this Decree;

17 b. To resolve any claims of Settling Defendants that could have been  
18 asserted against the United States and DTSC with regard to the BPOU Area as  
19 provided in Section X (Covenants Not to Sue by Settling Defendants) of this  
20 Decree;

21 c. To simplify the remaining administrative and judicial enforcement  
22 activities concerning the BPOU Area by resolving the United States’ and DTSC’s  
23 claims against the Settling Defendants for interim response actions and for  
24 response costs related to interim response actions incurred and to be incurred at or  
25 in connection with the BPOU Area, as provided in Section VIII (Covenants Not to  
26 Sue by Plaintiffs) and Section IX (Reservation of Rights) of this Decree; and

27 d. To provide for contribution protection for the Settling Parties with  
28 respect to matters addressed in this Consent Decree pursuant to Section 113(f)(2)

1 of CERCLA, 42 U.S.C. § 9613(f)(2).

2 VI. PAYMENT OF RESPONSE COSTS

3 5. Within 30 days of the effective date of this Consent Decree, Allegiance  
4 Healthcare Corporation shall pay to EPA \$550,000 in the manner described in this  
5 Section.

6 6. Within 30 days of the effective date of this Consent Decree, Philip Morris  
7 USA Inc. shall pay to EPA \$1,500,000 in the manner described in this Section.

8 7. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to  
9 the U.S. Department of Justice account in accordance with current EFT procedures,  
10 referencing USAO File Number 2003V03651, the EPA Region and Site Spill  
11 Number 0927, and DOJ Case Number 90-11-2-354/7. Payment shall be made in  
12 accordance with instructions provided to Settling Defendants by the Financial  
13 Litigation Unit of the U.S. Attorney’s Office in the Central District of California  
14 following lodging of the Consent Decree.

15 8. At the time of payment, each Settling Defendant shall send a letter  
16 confirming the date and reference number of its FedWire EFT to the United States,  
17 EPA, and the Regional Financial Management Officer as provided in Section XV  
18 (Notices and Submissions) of this Decree.

19 9. The total amount to be paid pursuant to Paragraphs 5 and 6 shall be  
20 deposited in the Site 0927 San Gabriel Valley/Baldwin Park Special Account  
21 within the EPA Hazardous Substance Superfund to be retained and used to conduct  
22 or finance response actions at or in connection with the BPOU Area, or to be  
23 transferred by EPA to the EPA Hazardous Substance Superfund.

24 10. Within 30 days of the effective date of this Consent Decree, Allegiance  
25 Healthcare Corporation shall pay to DTSC \$16,050 in the form of a certified check  
26 or checks made payable to Cashier, California Department of Toxic Substances  
27 Control, and bearing on its face the docket number of this proceeding.

28 11. Within 30 days of the effective date of this Consent Decree, Philip

1 Morris USA Inc. shall pay to DTSC \$44,138 in the form of a certified check or  
2 checks made payable to Cashier, California Department of Toxic Substances  
3 Control, and bearing on its face the docket number of this proceeding.

4 12. Each Settling Defendant shall send its certified check, along with a  
5 transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel Valley  
6 Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

7 Department of Toxic Substances Control  
8 Accounting/Cashier  
9 1001 I Street, 4<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

10 13. Each Settling Defendant's payment to EPA and DTSC includes an  
11 amount for: (i) past Response Costs and DTSC Response Costs incurred at or in  
12 connection with the BPOU Area; (ii) projected future Response Costs and DTSC  
13 Response Costs to be incurred at or in connection with the BPOU Area; and (iii) a  
14 premium to cover the risks and uncertainties associated with this settlement,  
15 including but not limited to, the risk that total Response Costs and DTSC Response  
16 Costs incurred or to be incurred at or in connection with the BPOU Area will  
17 exceed the estimated total Response Costs and DTSC Response Costs upon which  
18 Settling Defendants' payments are based.

19 VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

20 14. Interest on Late Payments. If a Settling Defendant fails to make any  
21 payment under Paragraphs 5, 6, 10, or 11 within 30 days of the effective date of  
22 this Consent Decree, then that Settling Defendant shall pay Interest on the unpaid  
23 balance, commencing on the date that payment is due and accruing through the  
24 date of payment. Each Settling Defendant shall make all payments required of that  
25 Settling Defendant by this Paragraph in the manner described in Paragraphs 7, 8,  
26 and 12 unless otherwise directed in writing by EPA or DTSC.

27  
28 15. Stipulated Penalty.

1 a. In addition to the Interest required by Paragraph 14 (Interest on Late  
2 Payments), if a Settling Defendant fails to remit the payments to the United States  
3 required by Paragraphs 5 and 6 when due, then that Settling Defendant also shall  
4 pay stipulated penalties to the United States of \$1,000 per day for each day that its  
5 payment is late.

6 b. Stipulated penalties are due and payable to the United States within 30  
7 days of the date of the demand for payment of the penalties by the United States.  
8 All payments to the United States under this Paragraph shall be identified as  
9 “stipulated penalties” and shall be made by certified or cashier’s check made  
10 payable to “EPA Hazardous Substance Superfund.” The check, or a letter  
11 accompanying the check, shall reference the name and address of the party making  
12 payment, the Site name, EPA Region and Site Spill Number 0927, USAO File  
13 Number 2003V03651, and DOJ Case Number 90-11-2-354/7, and shall be sent to:

14 EPA - Cincinnati Accounting Operations  
15 Attn: Region 9 Receivables  
16 P.O. Box 371099M  
Pittsburgh, PA 15251

17 c. In addition to the Interest required by Paragraph 14 (Interest on Late  
18 Payments), if a Settling Defendant fails to remit when due the payment to DTSC  
19 required of that Settling Defendant by Paragraphs 10 and 11, then that Settling  
20 Defendant also shall pay stipulated penalties to DTSC of \$1,000 per day for each  
21 day that the payment is late.

22 d. Stipulated penalties are due and payable to DTSC within 30 days of the  
23 date of the demand for payment of the penalties by DTSC. All payments to DTSC  
24 under this Paragraph shall be identified as “stipulated penalties” and shall be made  
25 by certified or cashier’s check made payable to “Cashier, California Department of  
26 Toxic Substances Control.” The check, or a letter accompanying the check, shall  
27 reference the name and address of the party making payment and the Site name,  
28 and shall be sent to:

1 Department of Toxic Substances Control  
2 Accounting/Cashier  
3 1001 I Street, 4<sup>th</sup> Floor  
P.O. Box 806  
4 Sacramento, CA 95812-0806

5 e. At the time of payment of any stipulated penalties to the United States,  
6 the Settling Defendant making the payment shall send copies of check(s), and any  
7 accompanying transmittal letter(s), to the United States, EPA, and the Regional  
8 Financial Management Officer as provided in Section XV (Notices and  
9 Submissions) of this Consent Decree. At the time of payment of any stipulated  
10 penalties to DTSC, the Settling Defendant making the payment shall send copies of  
11 check(s), and any accompanying transmittal letter(s), to DTSC as provided in  
12 Section XV (Notices and Submissions).

13 f. Penalties shall accrue as provided in this Paragraph regardless of whether  
14 EPA or DTSC has notified the Settling Defendant of the violation or made a  
15 demand for payment, but need only be paid upon demand. All penalties shall  
16 begin to accrue on the day after payment is due and shall continue to accrue  
17 through the date of payment. Nothing herein shall prevent the simultaneous  
18 accrual of separate penalties for separate violations of this Consent Decree.

19 16. If the United States or DTSC brings an action to enforce this Consent  
20 Decree against a Settling Defendant, that Settling Defendant shall reimburse the  
21 Plaintiff(s) bringing the action for all costs of such action, including, but not  
22 limited to, costs of attorney time.

23 17. Payments made under this Section shall be in addition to any other  
24 remedies or sanctions available to Plaintiffs against a Settling Defendant by virtue  
25 of that Settling Defendant's failure to comply with the requirements of this  
26 Consent Decree.

27 18. Notwithstanding any other provision of this Section, the United States  
28 may, in its unreviewable discretion, waive payment of any portion of the stipulated  
penalties that have accrued to the United States pursuant to this Consent Decree.

1 Notwithstanding any other provision of this Section, DTSC may, in its  
2 unreviewable discretion, waive payment of any portion of the stipulated penalties  
3 that have accrued to DTSC pursuant to this Consent Decree. Payment of stipulated  
4 penalties shall not excuse a Settling Defendant from its payment obligation as  
5 required by Section VI or from performance of any other requirements of this  
6 Consent Decree applicable to that Settling Defendant.

7 **VIII. COVENANTS NOT TO SUE BY PLAINTIFFS**

8 19. In consideration of the respective payments that will be made by each  
9 Settling Defendant under the terms of this Consent Decree, and except as otherwise  
10 specifically provided in Section IX (Reservation of Rights), the United States  
11 covenants not to sue or to take administrative action against that Settling Defendant  
12 pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and  
13 Section 7003 of RCRA, 42 U.S.C. § 6973, for performance of the Work and for  
14 recovery of Response Costs. In consideration of the payments that will be made by  
15 each Settling Defendant under the terms of this Consent Decree, and except as  
16 otherwise specifically provided in Section IX (Reservation of Rights), DTSC  
17 covenants not to sue or to take administrative action against that Settling Defendant  
18 pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and  
19 Section 7003 of RCRA, 42 U.S.C. § 6973, and their respective State law  
20 counterparts, for performance of the Work and for recovery of DTSC Response  
21 Costs. These covenants not to sue shall take effect upon the receipt by EPA and  
22 DTSC of the payments required by Section VI (Payment of Response Costs) and  
23 any amount due under Section VII (Failure to Comply with Consent Decree  
24 Requirements). These covenants not to sue accorded to each Settling Defendant  
25 are conditioned upon satisfactory performance by that Settling Defendant of its  
26 obligations under this Consent Decree. These covenants not to sue extend only to  
27 the Settling Defendants and do not extend to any other person.

28 **IX. RESERVATION OF RIGHTS**

1           20. Pre-certification Reservations. Notwithstanding any other provision of  
2 this Consent Decree, the United States reserves, and this Consent Decree is without  
3 prejudice to, the right to institute proceedings in this action or in a new action, or to  
4 issue an administrative order seeking to compel Settling Defendants (a) to perform  
5 further response actions relating to the BPOU Area or (b) to reimburse the United  
6 States for additional costs of response

7  
8 if, prior to Certification of Completion of the Remedial Action:

9           (1) conditions at the BPOU Area, previously unknown to EPA, are  
10 discovered, or

11           (2) information, previously unknown to EPA, is received, in whole or in  
12 part,

13  
14 and EPA determines that these previously unknown conditions or information  
15 together with any other relevant information indicates that the Remedial Action is  
16 not protective of human health or the environment. If EPA makes such a  
17 determination, DTSC reserves, and this Consent Decree is without prejudice to, the  
18 right to institute proceedings in this action or in a new action, or to issue an  
19 administrative order seeking to compel Settling Defendants to reimburse DTSC for  
20 additional costs of response.

21           21. Post-certification Reservations. Notwithstanding any other provision of  
22 this Consent Decree, the United States reserves, and this Consent Decree is without  
23 prejudice to, the right to institute proceedings in this action or in a new action, or to  
24 issue an administrative order seeking to compel Settling Defendants (a) to perform  
25 further response actions relating to the BPOU Area or (b) to reimburse the United  
26 States for additional costs of response

27  
28 if, subsequent to Certification of Completion of the Remedial Action:

1 (1) conditions at the BPOU Area, previously unknown to EPA, are  
2 discovered, or  
3 (2) information, previously unknown to EPA, is received, in whole or in  
4 part,  
5  
6 and EPA determines that these previously unknown conditions or this information  
7 together with other relevant information indicate that the Remedial Action is not  
8 protective of human health or the environment. If EPA makes such a  
9 determination, DTSC reserves, and this Consent Decree is without prejudice to, the  
10 right to institute proceedings in this action or in a new action, or to issue an  
11 administrative order seeking to compel Settling Defendants to reimburse DTSC for  
12 additional costs of response.

13 22. For purposes of Paragraph 20, the information and the conditions known  
14 to EPA shall include only that information and those conditions known to EPA as  
15 of May 31, 1999, the date of the ESD supplementing the ROD, and set forth in the  
16 ROD, the ESD, and the administrative record supporting the ROD and the ESD.  
17 For purposes of Paragraph 21, the information and the conditions known to EPA  
18 shall include only that information and those conditions known to EPA as of the  
19 date of Certification of Completion of the Remedial Action, and set forth in the  
20 ROD, the ESD, the administrative record supporting the ROD and the ESD, and  
21 the post-ROD administrative record.

22 23. General Reservation of Rights. The covenants not to sue set forth in  
23 Paragraph 19 do not pertain to any matters other than those expressly specified  
24 therein. The United States and DTSC reserve, and this Consent Decree is without  
25 prejudice to, all rights of the United States and DTSC against Settling Defendants  
26 with respect to all other matters including, but not limited to, the following:

27 (1) claims against a Settling Defendant based on a failure by that Settling  
28 Defendant to meet a requirement of this Consent Decree;



1 (2) liability of a Settling Defendant arising from the past, present, or future  
2 disposal, release, or threat of release of hazardous substances, pollutants,  
3 contaminants, or solid wastes outside of the BPOU Area;

4 (3) liability of a Settling Defendant for disposal of hazardous substances,  
5 pollutants, contaminants, or solid wastes at the BPOU Area by that Settling  
6 Defendant after signature of this Consent Decree, other than as provided in the  
7 ROD, as supplemented by the ESD, the Remedial Action, or otherwise ordered by  
8 EPA;

9 (4) liability of a Settling Defendant for damages for injury to, destruction of,  
10 or loss of natural resources, and for the costs of any natural resource damage  
11 assessments;

12 (5) a Settling Defendant's criminal liability;

13 (6) liability of a Settling Defendant for additional operable units at the Site,  
14 or a final response action, including, but not limited to, the final Record of  
15 Decision for the BPOU Area;

16 (7) liability for injunctive relief or administrative order enforcement under  
17 Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not  
18 within the BPOU Area; and

19 (8) liability for costs incurred or to be incurred that are not within the  
20 definition of Response Costs or DTSC Response Costs.

21 24. Notwithstanding any other provision of this Consent Decree, the United  
22 States and DTSC retain all authority and reserve all rights to take any and all  
23 response actions authorized by law.

24 X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

25 25. Settling Defendants hereby covenant not to sue and agree not to assert  
26 any claims or causes of action against the United States or DTSC, or their  
27 contractors or employees, with respect to the Response Costs, DTSC Response  
28 Costs, the Work or this Consent Decree, including, but not limited to:

1 a. any direct or indirect claim for reimbursement from the Hazardous  
2 Substance Superfund (established pursuant to the Internal Revenue Code, 26  
3 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42  
4 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

5 b. any claims arising out of response actions at or in connection with the  
6 BPOU Area, including any claims under the United States Constitution, the  
7 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to  
8 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

9 c. any claims against the United States, including any department, agency,  
10 or instrumentality of the United States, under CERCLA Sections 107 or 113  
11 related to the BPOU Area;

12 d. any claims against the State of California, including any department,  
13 agency, or instrumentality of the State of California, under CERCLA Sections 107  
14 or 113 related to the BPOU Area; or

15 e. any claims against the United States or DTSC arising out of response  
16 activities at the BPOU Area, including claims based on EPA's and DTSC's  
17 selection of response actions, oversight of response activities or approval of plans  
18 for such activities.

19 26. Except as provided in Paragraph 28 (Waiver of Claims) and Paragraph  
20 33 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply  
21 in the event the United States or DTSC brings a cause of action or issues an order  
22 pursuant to the reservations set forth in Paragraph 23, but only to the extent that  
23 Settling Defendants' claims arise from the same response action or response costs  
24 that the United States or DTSC is seeking pursuant to the applicable reservation.

25 27. Nothing in this Consent Decree shall be deemed to constitute approval  
26 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42  
27 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

28 28. Settling Defendants hereby agree not to assert any CERCLA claims or

1 causes of action that they may have for all matters relating to Response Costs,  
2 DTSC Response Costs, or the Work, including for contribution, against any person  
3 other than Settling Defendants' insurance carriers and potentially responsible  
4 parties who have received in the past or receive in the future special notice from  
5 EPA in connection with the BPOU Area and who are not signatories to this  
6 Consent Decree or another Consent Decree in connection with the BPOU Area, for  
7 damages or costs of any kind relating to response actions and costs incurred at the  
8 BPOU Area, including without limitation, claims under Sections 107 and 113 of  
9 CERCLA, 42 U.S.C. §§ 9607 and 9613, common law claims of negligence,  
10 contribution, equitable indemnity and restitution, and claims under any other  
11 federal, state or local statutory or common law. This waiver shall not apply with  
12 respect to any defense, claim, or cause of action that a Settling Defendant may  
13 have against any person if such person asserts a claim or cause of action relating to  
14 the BPOU Area against such Settling Defendant.

15 **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

16 29. Except as expressly provided in Paragraph 28, nothing in this Consent  
17 Decree shall be construed to create any rights in, or grant any cause of action to,  
18 any person not a Party to this Consent Decree. The preceding sentence shall not be  
19 construed to waive or nullify any rights that any person not a signatory to this  
20 Decree may have under applicable law. Except as provided in Paragraph 28, each  
21 of the Parties expressly reserves any and all rights (including, but not limited to,  
22 any right to contribution), defenses, claims, demands, and causes of action which  
23 each Party may have with respect to any matter, transaction, or occurrence relating  
24 in any way to the Site against any person not a Party hereto. The Parties intend  
25 that neither this Decree nor its contents shall constitute evidence in any proceeding  
26 of any liability or obligation whatsoever of any Settling Defendant, except that it  
27 may be used by the United States, DTSC, or the Settling Defendants in any action  
28 brought to enforce or interpret this Decree and the rights and obligations of the

1 parties hereunder.

2         30. The Parties agree, and by entering this Consent Decree this Court finds,  
3 that the Settling Defendants are entitled, as of the effective date of this Consent  
4 Decree, to protection from contribution actions or claims as provided by CERCLA  
5 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and its respective State law counterpart,  
6 for “matters addressed” in this Consent Decree. For purposes of this Paragraph,  
7 “matters addressed” shall mean (a) the Work, (b) all response costs incurred prior  
8 to the entry of this Consent Decree by the United States, DTSC, or any other  
9 person at or in connection with the BPOU Area, and (c) all response costs related  
10 to the implementation or oversight of the Work to be incurred after the entry of this  
11 Consent Decree by the United States, DTSC, or any other person at or in  
12 connection with the BPOU Area. The “matters addressed” in this Consent Decree  
13 do not include those response costs or response actions as to which the United  
14 States or DTSC has reserved its rights under this Consent Decree (except for  
15 claims for failure to comply with this Decree), in the event that the United States or  
16 DTSC asserts rights against Settling Defendants coming within the scope of such  
17 reservations.

18         31. The Settling Defendants agree that with respect to any suit or claim for  
19 contribution brought by them for matters related to this Consent Decree, they will  
20 notify the United States and DTSC in writing no later than 60 days prior to the  
21 initiation of such suit or claim.

22         32. The Settling Defendants also agree that with respect to any suit or claim  
23 for contribution brought against them for matters related to this Consent Decree,  
24 they will notify in writing the United States and DTSC within 10 days of service of  
25 the complaint on them. In addition, Settling Defendants shall notify the United  
26 States and DTSC within 10 days of service or receipt of any Motion for Summary  
27 Judgment and within 10 days of receipt of any order from a court setting a case for  
28 trial.

33. In any subsequent administrative or judicial proceeding initiated by the United States or DTSC for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or DTSC in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiffs).

## XII. ACCESS

34. If any of the Settling Defendants own or control any property where access is needed to implement response activities at the Site, then, commencing on the date of lodging of the Consent Decree, such Settling Defendants shall provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to such property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIII (Access to Information); and

1 g. Assessing Settling Defendants' compliance with this Consent Decree.

2 35. Notwithstanding any provision of this Consent Decree, the United States  
3 and the State of California retain all of their access authorities and rights, including  
4 enforcement authorities related thereto, under CERCLA, RCRA, and any other  
5 applicable statute or regulations.

6 XIII. ACCESS TO INFORMATION

7 36. Settling Defendants shall provide to EPA and DTSC, upon request,  
8 copies of all documents and information within their possession or control or that  
9 of their contractors or agents relating to activities at the Site or to the  
10 implementation of this Consent Decree, including, but not limited to, sampling,  
11 analysis, chain of custody records, manifests, trucking logs, receipts, reports,  
12 sample traffic routing, correspondence, or other documents or information related  
13 to the Site.

14 37. Confidential Business Information and Privileged Documents.

15 a. Settling Defendants may assert business confidentiality claims covering  
16 part or all of the documents or information submitted to Plaintiffs under this  
17 Consent Decree to the extent permitted by and in accordance with Section  
18 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).  
19 Documents or information determined to be confidential by EPA will be accorded  
20 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
21 confidentiality accompanies documents or information when they are submitted to  
22 EPA and DTSC, or if EPA has notified Settling Defendants that the documents or  
23 information are not confidential under the standards of Section 104(e)(7) of  
24 CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be given access to such  
25 documents or information without further notice to Settling Defendants.

26 b. The Settling Defendants may assert that certain documents, records and  
27 other information are privileged under the attorney-client privilege or any other  
28 privilege recognized by federal law. If the Settling Defendants assert such a

1 privilege in lieu of providing documents, they shall provide the Plaintiffs with the  
2 following: (1) the title of the document, record, or information; (2) the date of the  
3 document, record, or information; (3) the name, title, affiliation (e.g., company or  
4 firm), and address of the author of the document, record, or information; (4) the  
5 name and title of each addressee and recipient; (5) a description of the subject of  
6 the document, record, or information; and (6) the privilege asserted by Settling  
7 Defendants. However, no document, report or other information created or  
8 generated pursuant to the requirements of the Consent Decree shall be withheld on  
9 the grounds that it is privileged.

10 38. No claim of confidentiality shall be made with respect to any data,  
11 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,  
12 scientific, chemical, or engineering data, or any other documents or information  
13 evidencing conditions at or around the Site.

#### 14 XIV. RETENTION OF RECORDS

15 39. Until 10 years after the Settling Defendants' receipt of EPA's  
16 notification, transmitted pursuant to Paragraph 42, of the issuance of EPA's  
17 Certification of Completion of the Work, each Settling Defendant shall preserve  
18 and retain all records and documents now in its possession or control, or which  
19 come into its possession or control, that relate in any manner to response actions  
20 taken at the BPOU Area or liability of any person for response actions conducted  
21 and to be conducted at the BPOU Area, regardless of any corporate retention  
22 policy to the contrary.

23 40. At the conclusion of this document retention period, Settling Defendants  
24 shall notify the United States and DTSC at least 90 days prior to the destruction of  
25 any such records or documents, and, upon request by the United States or DTSC,  
26 Settling Defendants shall deliver any such records or documents to EPA or DTSC.  
27 The Settling Defendants may assert that certain documents, records and other  
28 information are privileged under the attorney-client privilege or any other privilege

1 recognized by federal law. If the Settling Defendants assert such a privilege, they  
2 shall provide the Plaintiffs with the following: (1) the title of the document,  
3 record, or information; (2) the date of the document, record, or information; (3) the  
4 name, title, affiliation (e.g., company or firm), and address of of the author of the  
5 document, record, or information; (4) the name and title of each addressee and  
6 recipient; (5) a description of the subject of the document, record, or information;  
7 and (6) the privilege asserted by Settling Defendants. However, no document,  
8 report or other information created or generated pursuant to the requirements of the  
9 Consent Decree shall be withheld on the grounds that it is privileged.

10 41. Each Settling Defendant hereby certifies individually that, to the best of  
11 its knowledge and belief, after thorough inquiry, it has not altered, mutilated,  
12 discarded, destroyed or otherwise disposed of any records, documents or other  
13 information relating to its potential liability regarding the BPOU Area since  
14 notification of potential liability by the United States or DTSC or the filing of suit  
15 against it regarding the BPOU Area, and that it has fully complied with any and all  
16 EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA,  
17 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 18 XV. NOTICES AND SUBMISSIONS

19 42. Whenever, under the terms of this Consent Decree, written notice is  
20 required to be given or a report or other document is required to be sent by one  
21 Party to another, it shall be directed to the individuals at the addresses specified  
22 below, unless those individuals or their successors give notice of a change to the  
23 other Parties in writing. All notices and submissions shall be considered effective  
24 upon receipt, unless otherwise provided. Written notice as specified herein shall  
25 constitute complete satisfaction of any written notice requirement of the Consent  
26 Decree with respect to the United States, EPA, DTSC, and the Settling Defendants,  
27 respectively.

28 As to the United States:



1 Chief, Environmental Enforcement Section  
2 Environment and Natural Resources Division  
3 U.S. Department of Justice  
4 P.O. Box 7611, Ben Franklin Station  
5 Washington, D.C. 20044  
6 Re: DJ # 90-11-2-354/7  
7 and

8 Robert D. Mullaney  
9 Trial Attorney  
10 Environmental Enforcement Section  
11 U.S. Department of Justice  
12 301 Howard Street, Suite 1050  
13 San Francisco, CA 94105

14 As to EPA:

15 Lewis C. Maldonado, ORC-3  
16 Assistant Regional Counsel  
17 United States Environmental Protection Agency  
18 75 Hawthorne Street  
19 San Francisco, CA 94105

20 and

21 Wayne Praskins, SFD-7-3  
22 EPA Project Coordinator  
23 United States Environmental Protection Agency  
24 75 Hawthorne Street  
25 San Francisco, CA 94105

26 As to the Regional Financial Management Officer:

27 Joe Schmidt, PMD-5  
28 United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

29 As to DTSC:

30 Jacalyn Spizman  
31 DTSC Project Coordinator  
32 Department of Toxic Substances Control  
33 5796 Corporate Avenue  
34 Cypress, CA 90630

35 and

36 Ann Rushton  
37 Office of the Attorney General  
38 300 South Spring Street  
Los Angeles, CA 90013

1 As to the Settling Philip Morris Defendants:

2 Manning Gasch, Jr.  
3 Hunton & Williams  
4 951 E. Byrd Street  
5 Richmond, VA 23019

6 As to the Settling Allegiance Healthcare Defendants:

7 George Kokkines  
8 Senior Counsel, Litigation  
9 Cardinal Health, Inc.  
10 1430 Waukegan Road  
11 McGaw Park, Illinois 60085

12 and

13 Charles A. Echols  
14 Director, Environment, Health and Safety  
15 Cardinal Health, Inc.  
16 1430 Waukegan Road  
17 MP KB-B3  
18 McGaw Park, IL 60085-6787

19 **XVI. EFFECTIVE DATE**

20 43. The effective date of this Consent Decree shall be the date upon which  
21 this Consent Decree is entered by the Court, except as otherwise provided herein.

22 **XVII. RETENTION OF JURISDICTION**

23 44. This Court retains jurisdiction over this matter for the purpose of  
24 interpreting and enforcing the terms of this Consent Decree.

25 **XVIII. INTEGRATION/APPENDICES**

26 45. This Consent Decree and its appendices constitute the final, complete  
27 and exclusive agreement and understanding among the Parties with respect to the  
28 settlement embodied in this Consent Decree. The Parties acknowledge that there  
are no representations, agreements, or understandings relating to the settlement  
other than those expressly contained in this Consent Decree. The following  
appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the BPOU Area;

“Appendix B” is a copy of the ROD; and

1 “Appendix C” is a copy of the ESD.

2 **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

3 46. This Consent Decree shall be lodged with the Court for a period of not  
4 less than thirty (30) days for public notice and comment. The United States  
5 reserves the right to withdraw or withhold its consent if the comments regarding  
6 the Consent Decree disclose facts or considerations which indicate that the Consent  
7 Decree is inappropriate, improper, or inadequate. Settling Defendants consent to  
8 the entry of this Consent Decree without further notice.

9 47. If for any reason the Court should decline to approve this Consent  
10 Decree in the form presented, this agreement is voidable at the sole discretion of  
11 any Party and the terms of the agreement may not be used as evidence in any  
12 litigation between the Parties.

13 **XX. SIGNATORIES/SERVICE**

14 48. Each undersigned representative of a Settling Defendant to this Consent  
15 Decree, the Assistant Attorney General for the Environment and Natural Resources  
16 Division of the United States Department of Justice, or his delegate, and the  
17 Deputy Attorney General of the California Department of Justice certifies that he  
18 or she is fully authorized to enter into the terms and conditions of this Consent  
19 Decree and to execute and legally bind such Party to this document.

20 49. Each Settling Defendant hereby agrees not to oppose entry of this  
21 Consent Decree by this Court or to challenge any provision of this Consent Decree  
22 unless the United States has notified the Settling Defendants in writing that it no  
23 longer supports entry of the Consent Decree.

24 50. Each Settling Defendant shall identify, on the attached signature page,  
25 the name, address and telephone number of an agent who is authorized to accept  
26 service of process by mail on behalf of that Party with respect to all matters arising  
27 under or relating to this Consent Decree. Settling Defendants hereby agree to  
28 accept service in that manner and to waive the formal service requirements set

1 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
2 rules of this Court, including, but not limited to, service of a summons.

3 **XXI. FINAL JUDGMENT**

4 51. Upon approval and entry of this Consent Decree by the Court, this  
5 Consent Decree shall constitute a final judgment between and among the United  
6 States and the Settling Defendants and between and among DTSC and the Settling  
7 Defendants. The Court finds that there is no just reason for delay and therefore  
8 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

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11 Dated: \_\_\_\_\_  
12 United States District Judge  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States and California Department of Toxic Substances Control v.  
3 Allegiance Healthcare Corporation and Philip Morris USA Inc., relating to the  
4 BPOU Area.

5  
6 FOR THE UNITED STATES OF AMERICA

7  
8  
9 Dated: \_\_\_\_\_

10  
11 Kelly A. Johnson  
12 Acting Assistant Attorney General  
13 Environment and Natural Resources  
14 Division  
15 U.S. Department of Justice  
16 Washington, D.C. 20530

17  
18  
19 Dated: \_\_\_\_\_

20 Robert D. Mullaney  
21 Trial Attorney  
22 Environmental Enforcement Section  
23 Environment and Natural Resources  
24 Division  
25 U.S. Department of Justice  
26 301 Howard Street, Suite 1050  
27 San Francisco, California 94105  
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Dated: \_\_\_\_\_

\_\_\_\_\_  
Keith Takata  
Director, Superfund Division  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lewis C. Maldonado  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
San Francisco, CA 94105

1 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
2 CONTROL

3 Dated:\_\_\_\_\_

4 Thomas Cota, Chief  
5 Southern California Cleanup Operations  
6 Branch, Cypress Office  
7 Department of Toxic Substances Control  
8 5796 Corporate Avenue  
9 Cypress, California 90630

10 Dated:\_\_\_\_\_

11 Ann Rushton  
12 Deputy Attorney General  
13 California Department of Justice  
14 300 South Spring Street  
15 Los Angeles, California 90013

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States and State of California Department of Toxic Substances Control v.  
3 Allegiance Healthcare Corporation and Philip Morris USA Inc., relating to the  
4 BPOU Area.

5 FOR ALLEGIANCE HEALTHCARE CORPORATION

6 Dated: \_\_\_\_\_

7 \_\_\_\_\_  
8 Charles A. Echols  
9 Director, Environment, Health and Safety  
10 Cardinal Health, Inc.  
11 1430 Waukegan Road  
12 MP KB-B3

5-6787

13 Agent Authorized to Accept Service on Behalf of Above-signed Party:

14 The Prentice-Hall Corporation System, Inc.  
15 33 North LaSalle Street  
16 Chicago, IL 60602



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States and State of California Department of Toxic Substances Control v.  
3 Allegiance Healthcare Corporation and Philip Morris USA Inc., relating to the  
4 BPOU Area.

5 FOR PHILIP MORRIS USA INC.

6 Dated: \_\_\_\_\_

7 \_\_\_\_\_  
8 John E. Holleran  
9 Senior Vice President  
10 Compliance and Brand Integrity  
11 Philip Morris USA Inc.

12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

13 Manning Gasch, Jr.  
14 Hunton & Williams  
15 951 E. Byrd Street  
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